

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THOMAS LOWELL KETCHUM, JR.

PLAINTIFF

vs.

Civil Action No. 1:97cv410-D-D

LAWRENCE R. SHAW, individually and
as an agent of CONDOR RELIABILITY
SERVICES, INC.

DEFENDANT

MEMORANDUM OPINION

Presently before the court is the motion of the plaintiff to remand this cause to the Circuit Court of Lee County, Mississippi. Finding that the motion is not well taken, the undersigned shall deny the motion and permit this cause to proceed before this court.

This court is required to remand any action over which it has no subject matter jurisdiction at any time before final judgment. Buchner v. F.D.I.C., 981 F.2d 816, 819 (5th Cir. 1993); 28 U.S.C. § 1447. An objection to the subject matter jurisdiction of this court may be raised by any party at any time in the course of these proceedings, and may even be raised by the court *sua sponte*. See Mall v. Atlantic Fin. Fed., 127 F.R.D. 107 (W.D. Pa. 1989); Glaziers, Glass Workers of Jacksonville v. Florida Glass and Mirror of Jacksonville, 409 F. Supp. 225, 226 (M.D. Fla. 1976); 28 U.S.C. § 1447. Nevertheless, this court has no discretionary authority to remand federal-law actions to a state court. Burks v. Amerada Hess Corp., 8 F.3d 301, 304 (5th Cir. 1993); Buchner v. F.D.I.C., 981 F.2d 816, 817 (5th Cir. 1993); In re Wilson Indus., 886 F.2d 93, 96 (5th Cir 1989). The court in Buchner noted that there are only three situations under statute in which a federal trial court may remand a claim to state court. Buchner, 981 F.2d at 819. Those circumstances are: (1) a trial court has discretion to remand state law claims that

were removed along with one or more federal question claims; (2) it must act on a timely motion to remand based on a defect in removal procedure; and (3) it must remand a case over which it has no subject matter jurisdiction. Id. A district court exceeds its authority when it remands a case on grounds not permitted by statute. Thermtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336, 351, 96 S.Ct. 584, 593, 46 L.Ed.2d 542 (1976); Buchner, 981 F.2d at 820. There is a single exception to the Thermtron rule, and that exception is "a district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 357, 108 S.Ct. 614, 623, 98 L.Ed.2d 720 (1988). In Carnegie-Mellon, the court determined that retaining jurisdiction was inappropriate where only pendent state law claims remained to be decided after all federal claims had been dropped. Carnegie-Mellon, 484 U.S. at 354-56, 108 S.Ct. at 621-22.

When making determinations of whether remand is necessary, the defendant is the party who bears the burden of establishing that the removal to federal court is proper. Jernigan v. Ashland Oil Co., 989 F.2d 812, 815 (5th Cir. 1993); LeJuene v. Shell Oil Co., 950 F.2d 267, 271 (5th Cir. 1992); B., Inc. v. Miller Brewing Company, 663 F.2d 545, 549 (5th Cir. 1981). Further, the removal statutes are strictly construed, and all doubts will be resolved against a finding of proper removal. Dodson v. Spiliada Maritime Corp., 951 F.2d 40, 42 (5th Cir. 1992); Butler v. Polk, 592 F.2d 1293, 1296 (5th Cir. 1979). In the case at bar, the defendant contends that this court has jurisdiction over the present action based upon federal question jurisdiction. Therefore, the defendant carries the burden of establishing federal jurisdiction in this action.

In determining if removal is proper, generally the determination that must be made is

whether this court would have had original jurisdiction to hear this action if the case had been filed here instead of state court. Caterpillar v. Williams, 482 U.S. 386, 391-92, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987); Grubbs v. General Electric Credit Corp., 405 U.S. 699, 702, 92 S.Ct. 1344, 1347, 31 L.Ed.2d 612 (1972); 28 U.S.C. § 1332. Jurisdiction based on diversity of the parties is not at issue in this case, and therefore there must exist some avenue of federal question jurisdiction to maintain the action in this court. In other words, some part of the action must be one "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "A suit arises under the law that creates the cause of action." American Well Works Co. v. Layne & Bowler Co., 241 U.S. 257, 260, 60 L.Ed. 987, 36 S.Ct. 585 (1916) (Holmes, J.).

One powerful doctrine has emerged, however - the "well-pleaded complaint rule - which as a practical matter severely limits the number of cases in which state law "creates the cause of action" that may be initiated in or removed to federal district court . . .

Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 9, 77 L.Ed.2d 420, 430-31, 103 S.Ct. 2841 (1983).

As a consequence, the existence of a federal question will depend upon the application of the well-pleaded complaint rule. If the face of the plaintiff's complaint reveals no issue of federal law, there is no federal question jurisdiction. Caterpillar, 482 U.S. at 392, 107 S.Ct. 2425, 96 L.Ed.2d at 327 ("The rule makes the plaintiff the master of his claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.").

[W]hether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose.

Franchise Tax Board, 463 U.S. at 9, 77 L.Ed.2d at 430, 103 S.Ct. 2841 (1983) (quoting Taylor v. Anderson, 234 U.S. 74, 75-76, 58 L.Ed. 1218, 34 S.Ct. 724 (1914)).

In this case, the plaintiff originally filed in state court and asserted the violation of two particular provisions of Mississippi statutory law. Miss. Code Ann. § 71-1-47; 79-1-9. In doing so, however, Mr. Ketchum specifically states in his complaint that the defendant's actions are also in violation of the First Amendment to the United States Constitution as well as the National Labor Relations Act. Plaintiff's Complaint, ¶3 ; U.S. CONST, AMEND. I; 29 U.S.C. § 158(a)(5). As such, the face of the plaintiff's complaint reveals the presence of federal jurisdiction over the case at bar. The defendant properly removed this action to this court, and the plaintiff is not entitled to the remand of this action to state court. The plaintiff's motion to remand shall be denied.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 2001.

United States District Judge

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ORDER DENYING MOTION TO REMAND

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

) the motion of the plaintiff to remand this action to the Circuit Court of Lee
County, Mississippi is hereby DENIED.

SO ORDERED, this the _____ day of April 2001.

United States District Judge